U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-98-060-50027 Office: Vermont Service Center Date: AUG 3 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The Associate Commissioner has discovered evidence which was not considered prior to rendering his decision, and, pursuant to 8 C.F.R. 103.5(a)(5), the case will be reopened on Service motion. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a youth minister. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience. The director also found that the petitioner had failed to establish its ability to pay the proffered wage.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a twenty-seven-year-old single male native and citizen of Jamaica. The beneficiary entered the United States as a visitor on June 15, 1992 and his authorized period of admission expired on August 28, 1992. The petitioner did not indicate whether the beneficiary was in deportation or exclusion proceedings or whether he had ever worked in the United States without permission.

The first issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on December 22, 1997. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from December 22, 1995 to December 22, 1997.

In its letter dated October 6, 1997, the petitioner stated that:

> During [the beneficiary's] 5 years of church attendance . . . [he] has labored with us in several posts, including but not limited to the following: Usher, Junior Bible Class Teacher, Moderator of church services and assisting in the Baptisms of new members. In addition, [the beneficiary] has aided in the maintenance of the Church building.

The petitioner submitted a photocopy of a certificate of ordination awarded by it to the beneficiary on May 18, 1996.

On February 12, 1998, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner stated that the beneficiary "has been a volunteer Minister." The petitioner submitted photocopies of two checks written to the beneficiary subsequent to the qualifying period.

On appeal, the petitioner states that the beneficiary "has been working, though at a very nominal fee, namely a stipend of between $50-$100 per month, on a full-time, permanent basis, in the positions of Youth Coordinator and later, when ordained, as a Youth Minister for this church." The petitioner provides a detailed description of the beneficiary's activities at the church. The petitioner does not provide any evidence (such as pay checks) of this "nominal fee" that was purportedly paid to the beneficiary. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Counsel argues that "nothing in the regulations requires that an actual salary be paid to the beneficiary in order to qualify for this classification." Counsel's argument that neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying is correct. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from December 22, 1995 to December 22, 1997. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The next issue to be examined is whether the petitioner has the ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage . . . Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner indicated that the beneficiary will receive an hourly salary of $5.15. On February 12, 1998, the director requested that the petitioner submit evidence of its ability to pay the proffered wage. In response, the petitioner submitted a photocopy of its 1997 federal income tax return. According to this return, the petitioner had an excess of $3,124.00 that year. On appeal, the petitioner submits a letter from its treasurer who asserts that "our average monthly deposit is $2500.00 which enables us to financially support [the beneficiary]." The petitioner submits photocopies of checks drafted by it and receipts for purchases it purportedly made. The evidence submitted in support of this petition is not sufficient. 8 C.F.R. 204.5(g)(2) provides a list of documents that may be submitted to support a petitioner's claim to be able to pay a wage. The photocopied checks and receipts do not indicate what funds the petitioner has available, nor do they indicate what debts the petitioner is obliged to pay. The 1997 tax return indicated that the petitioner had an excess of $3,124.00. This does not establish the petitioner's ability to pay the proffered wage. Accordingly, the petitioner has not established its ability to pay the proffered wage in accordance with 8 C.F.R. 204.5(g)(2).

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish that it is a qualifying, non-profit religious organization as defined at 8 C.F.R. 204.5(m)(3), or that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the grounds discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.